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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,720	08/25/2003	Joseph H. Lyons	1857.2030000	9846
28393	7590	04/14/2005		EXAMINER
		STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.		CYGAN, MICHAEL T
		1100 NEW YORK AVE., N.W.	ART UNIT	PAPER NUMBER
		WASHINGTON, DC 20005	2855	

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,720	LYONS, JOSEPH H. <i>PM</i>	
	Examiner Michael Cygan	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 February 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-18 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 July 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. ____.
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 28 February 2005. 5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barada (US 4,953,388) in view of Carraras (US 4,604,892). Barada teaches an air gauge sensor comprising dividing portion [32], reference channel [42], measurement channel [40], flow restrictors [44,46] in both channels, mass flow sensor [50] coupled to both channels and to a controller (Figure 2), and a mass flow controller [20] coupled to a filter [30] acting as a snubber; see entire document, especially Figure 1. Barada teaches the method for proximity sensing with the abovedescribed apparatus; see abstract and column 3. Barada teaches the claimed invention except for an elongated orifice, particularly having the claimed dimensions.

Carraras teaches the use of a rectangular orifice having a shape homothetic of that of the deposit to be measured; see Figure 4 lines 6-9 and Figures 1 and 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a rectangular orifice as taught by Carraras in the invention taught by Barada to form the orifices, since Carraras

teaches that this "essential feature" allows the equivalent of a volume to be measured; see column 4 lines 6-9.

With respect to the ranges of dimension claimed, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barada (US 4,953,388) in view of Zumbach (US 3,948,082). Barada teaches an air gauge sensor comprising dividing portion [32], reference channel [42], measurement channel [40], flow restrictors [44,46] in both channels, mass flow sensor [50] coupled to both channels and to a controller (Figure 2), and a mass flow controller [20] coupled to a filter [30] acting as a snubber; see entire document, especially Figure 1. Barada teaches the method for proximity sensing with the abovedescribed apparatus; see abstract and column 3. Barada teaches the claimed invention except for an elongated orifice, particularly having the claimed dimensions.

Zumbach teaches the use of a longitudinal sensing slit [34] for measuring air gaps; see column 8 and Figure 4. It have been obvious to one having ordinary skill in the art at the time the invention was made to use a rectangular orifice as taught by Zumbach in the invention taught by Barada to form the

orifices, since Zumbach teaches that this eliminates the need for exact lateral guidance, since the air gap is in the form of a homogeneous field; see column 8 lines 60+.

With respect to the ranges of dimension claimed, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

Applicant's arguments filed 28 February 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that applicant's combination is for the purpose of increasing sensitivity, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that the distance sensing probes of the applied secondary references have some differences with applicant's invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the

test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Proper motivations for advantageous use of the probe shape of either Zumbach or Carraras in the invention taught by Barada are provided in the rejections.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL CYMAN, PH.D.
PRIMARY EXAMINER